



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Ms. Tatia R. Randolph
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR96-2108

Dear Ms. Randolph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102281.

The Dallas Police Department (the "department") received an open records request for the "narrative" portion of a particular police report. You seek to withhold the requested information pursuant to the "litigation exception," section 552.103 of the Government Code.¹

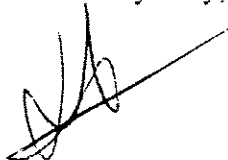
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. Although the department is not and would not be a party to any criminal litigation arising from the allegations contained in the requested narrative, you have submitted to this office a letter from an assistant district attorney of Dallas County, where the assault charges would be prosecuted, asking that the requested information be withheld from the public at this time pursuant to section 552.103. We therefore conclude that the department may withhold the narrative at issue at this time pursuant to section 552.103. See Open Records Decision No. 289 (1981) (where records pertaining to criminal litigation are held by both governmental body and prosecutor, demonstration that prosecutor asks that those records not be released triggers litigation exception).

¹Although you state that the release of the narrative would "compromise an ongoing criminal investigation," it is not clear to this office whether you intended to also invoke the protection of section 552.108 of the Government Code. Because we resolve your request under section 552.103, however, we need not address the applicability of section 552.108 at this time.

We assume, however, that the information at issue has not previously been made available to the criminal defendant or his attorney. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent that the criminal defendant or his attorney has seen or had access to this record, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/rho

Ref.: ID# 102281

Enclosure: Submitted document

cc: Mr. Donald Love
10455 North Central Expressway Suite 107-276
Dallas, Texas 75231
(w/o enclosure)